

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1769.01
COMPLAINT INVESTIGATOR: Jane Taylor-Holmes
DATE OF COMPLAINT: June 4, 2001
DATE OF REPORT: June 25, 2001
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: September 14, 2001

COMPLAINT ISSUES:

Whether the South Bend Community School Corporation violated:

511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's *individualized education program* (the "IEP") as written, specifically:

- a. failing to provide an interpreter for the student during class time;
- b. failing to provide the accommodation of additional time for dressing;
- c. failing to implement annual goals and objectives;
- d. failing to utilize a psychologist fluent in sign language to provide the student's triennial re-evaluation;
- e. failing to monitor the student's progress at the identified intervals; and
- f. failing to permit the student to participate in ISTEP+.

511 IAC 7-27-9(b) with regard to the school's alleged failure to make available to a student with a disability the variety of educational programs and services available to students without disabilities, specifically, precluding the student from participating in field trips to a restaurant and a local amusement park.

511 IAC 7-21-2 with regard to the school's alleged failure to provide a student with a disability with a free appropriate public education because the school has failed to provide an interpreter with intermediate signing skills as required by the student's *IEP*.

511 IAC 7-27-9(a)(11) with regard to the school's alleged failure to ensure that students with disabilities are in classes with their chronological peers, unless an alternative is determined appropriate by the case conference committee (the "CCC") and the reasons for that determination are documented in the *CCC Report* and *IEP*, specifically placing students from kindergarten through sixth grade in a single self-contained classroom.

511 IAC 7-25-6(i) with regard to the school's alleged failure to provide the parent with adequate written notice of the school's intent to conduct the triennial re-evaluation no less than twenty instructional days prior to the projected date of the re-evaluation.

511 IAC 7-25-6(j) with regard to the school's alleged failure, within twenty instructional days from the date of the re-evaluation, to provide the parent with written notice that the re-evaluation had been conducted and to advise the parent of the options for a CCC meeting.

511 IAC 7-27-9(d) with regard to the school's alleged failure to make available a continuum of placement options. (*During the course of the investigation this issue was resolved with the*

complainant.)

FINDINGS OF FACT:

1. The student (the "Student") is twelve years old and is eligible for special education and related services as a student with a hearing impairment ("HI"). The Student has secondary disabilities of orthopedic impairment and communication disorder. The Student utilizes a wheelchair and requires being catheterized twice daily. During the 2000-01 school year the Student completed the sixth grade in a self-contained classroom for students with HI (the "HI Classroom") at the local middle school (the "School"). The HI Classroom can include students from different age ranges who attend the School.
2. The Student's *IEP* for the 2000-01 school year (the "*IEP*") includes the following information regarding the provision of an interpreter and the Student's placement.

"To provide student with an interpreter (Signing Exact English skills) for all inclusion classes-art, music, recess, assemblies, and field trips."

"Interpreter for special, gym, art, music."

"Interpreter for school field trips & assemblies."

"Interpreter with Intermediate signing skills."

"She needs a total signing environment, signed presentation of all materials, small group instruction, repetition of concepts, interpreting of information, slower pace in academic areas."

The *IEP* also states the following. "[Student] does benefit from being placed in a self-contained H.I. classroom. Her signing, speech, and lang. skills are emphasized during all classes."

3. The *IEP* states that the Complainant requested a paraprofessional with intermediate signing skills. The *IEP* then states that the School is unable to require that paraprofessionals attend signing class, and that there is a process of 40 days to evaluate a paraprofessional.
4. The Director reported that the Teacher attended all special classes outside of the HI Classroom with the Student, including art, music, and physical education, and adapted the curriculum content as well as interpreted for the Student. Another teacher certified in the area of HI (the "Other HI Teacher") was assigned to the HI Classroom in the afternoons for the entire year. The Other HI Teacher arrived at 11:30 a.m. and remained until the end of the instructional day. Either the Teacher or the Other HI Teacher interpreted for the Student during all classroom and instructional periods. The HI Classroom was also staffed with two full-time special education paraprofessionals trained to work with students with HI; however, one of the paraprofessionals took an extended leave during the school year. After numerous attempts to find a qualified substitute paraprofessional failed, the School hired a high school student with a HI to assist in the HI Classroom in the afternoons. Another part-time paraprofessional from the School provided a two hour extension to her part-time schedule.
5. The Director reported that the Teacher is a certified HI teacher with 30 years of experience teaching deaf children. The Other HI Teacher is certified in the area of HI. The paraprofessional who remained in the HI Classroom is rated at a Level III proficiency. The paraprofessional who was on a medical leave was rated at a Level I proficiency. The high school student is rated at a Level III proficiency.
6. The Corporation's educational interpreter guidelines include four levels: Entry Level; Level I; Level II; and Level III. Individuals providing interpreter services to the Student were certified HI teachers, and Level I and Level III interpreters. An interpreter with a Level I proficiency has receptive and expressive fingerspelling and signing skills (with basic elementary vocabulary); can finger spell 5-6

letter words; signs simple sentences and short stories; formation and placement of signs is appropriate; uses suffixes and prefixes correctly. An interpreter with a Level III proficiency masters subject content vocabulary; uses signs fluently that students can readily understand.

7. The Director also reported that the HI Classroom had six students at the beginning of the 2000-01 school year. Two students subsequently moved and the second half of the year the HI Classroom was comprised of four students. One student was included in a general education classroom for the full day. The Student's self-contained HI Classroom consisted of three students for the second half of the year.
8. The Complainant contends that the Student was to be provided additional time to undress and redress herself for catheterization purposes.
9. The *IEP* states the following regarding additional time for dressing.

"Address cathing person-set up specific amt time to cath [Student] so she can be independent-remove own clothing and clean up."
"Make sure cathing person allows the time for her to undress by herself next year."
10. The Director reported that the Student had difficulty dressing and undressing due to her lack of stamina and a weight problem, and on one occasion it took 20 minutes for the Student to put a shoe on her foot and tie it. The Director acknowledged that staff did provide some assistance as the dressing time was significantly decreasing the Student's instructional time. The Director further reported that the issue of weight gain and lack of stamina were addressed at the Student's annual case review in June 2001, along with personal care needs, e.g. catheterization care. The *IEP* for the 2001-02 school year was updated to reflect a clearer understanding of how these issues will be worked on. All agreed to work together to provide consistent home and School activities, exercises, and nutritional approaches.
11. The *IEP* includes the following regarding utilizing a psychologist fluent in sign language.

"Parents concerned about re-evaluation in March without a psychologist who is competent in sign language to present directions to [Student]... Suggested consulting with a person they know of from Michigan State who consulted with [another school] in administering the psychological using sign language."
"Needs person (psychologist-competent in sign language to administer psychological to [Student])."
12. The Director reported that the Teacher interpreted for the Student during part of the Student's re-evaluation that involved language and comprehension. The Case Conference Summary from the June 2001 annual case review indicates that the results of the recent re-evaluation scores were very similar to those from the 1995 and 1998 evaluations. The Teacher also reported that the re-evaluation results are consistent with the Student's classroom performance. The Director reported that the Complainant requested an independent evaluation at the School's expense, and the School has agreed.
13. The Complainant reported that notification of the Student's re-evaluation was on April 26, 2001, and that a copy of the re-evaluation was sent home with the Student in her backpack.
14. The Complainant gave written consent for the Student's re-evaluation during the Student's annual case review on May 8, 2000. In a letter dated August 18, 2000, from the supervisor of psychological services, the Complainant was informed that the Student would be re-evaluated during the 2000-01 school year. The letter also states: "You will be sent a copy of the multidisciplinary team report

after the re-evaluation is completed.” The Student’s re-evaluation was conducted on March 6 and 14, 2001. The Director reported that the Teacher sent a note to the Complainant regarding the Student’s re-evaluation. The Teacher reported to the Director that she received a note from the Complainant thanking the Teacher for assisting the Student with the re-evaluation. No documentation of the exchange of notes was available. The Director sent a note dated May 16, 2001, informing the Complainant that the Student had been re-evaluated and that the results would be discussed at the next annual case review, unless the Complainant desired to discuss the results sooner.

15. The *IEP* indicates that the Student’s progress would be reported on a quarterly basis.
16. The quarterly progress reports include the goals and objectives from the Student’s *IEP*. The Teacher sent the Complainant copies of the quarterly progress reports and attached a handwritten note dated June 6, 2001, that stated the following. “This is the final copy of meeting objectives for this year. The first two grading periods were sent home. The third grading period did not get sent home inadvertently. Here is the fourth period copy.” The quarterly progress reports sent to the Complainant include the Teacher’s written comments next to the goals and objectives regarding the Student’s progress. The Teacher acknowledged in writing the goals and objectives that she was unable to work on and which ones she either changed or stopped. Of the forty-six goals and respective objectives in the Student’s *IEP*, there are approximately eight that were not implemented as written.
17. The *IEP* indicates that the Student would fully participate in ISTEP+ with the “test signed” and “sign language directions.”
18. The Director reported that it was the Teacher’s understanding that she could test students at their own individual level. Although the Student was in the sixth grade, her academic level was much lower than that of a sixth grader. Therefore, the Teacher spent two weeks working with the Student to complete the third grade edition of the ISTEP+ test. The completed test was turned in within the appropriate time frame; however, it was then discovered that the test was considered invalid.
19. On February 5, 2001, the HI Classroom joined with the life skills classes for a field trip to a Chinese restaurant. The restaurant’s main entrance has a lengthy flight of steps and is not handicap accessible. The Teacher reported that she called the restaurant several weeks prior to the trip and learned that there was not even a service entrance to utilize that might accommodate a wheelchair. The Student did not participate in this field trip.
20. The sixth-grade students went to an amusement park on June 6, 2001, as an end of the school year trip. The Teacher reported that there were various reasons that the Student was not allowed to attend the field trip. One of the rules for attending the trip included having all homework assignments turned in by a certain date. The Student was among other sixth graders who did not have all of their homework assignments turned in. The Teacher also reported that there was not an interpreter to accompany students on the field trip. Additionally, parents of special needs students are asked to attend the long day field trip. Another reason the Teacher cited for the Student not attending was the Student’s need to be catheterized twice a day; and the amusement park’s restrooms would be inaccessible and lack privacy. Further, transferring the Student from her wheelchair onto the rides would have required someone strong enough to help lift the Student and then position her back into the wheelchair.
21. The physical education teacher (the “PE Teacher”) reported that the Student has regularly participated in the adaptive PE classes. The adapted physical education teacher (the “Adapted PE Teacher”) also reported that she directed the Student’s adapted PE class eight times during the school year. The PE Teacher reported that the Student always received direction from either the

Teacher or the Other HI Teacher and the paraprofessionals while in PE class.

CONCLUSIONS:

- 1.a. Finding of Fact #2 indicates that the *IEP* specified that the Student should be provided an interpreter in the HI Classroom and "inclusion classes such as art, music, and PE. Finding of Fact #4, #5, #6, #7, and #21 indicate that an interpreter was provided to the Student during her time in the HI Classroom, as well as in the "inclusion" classes. No violation of 511 IAC 7-27-7(a) occurred with respect to providing an interpreter for the Student during class time, as specified in the *IEP*.
- 1.b. Findings of Fact #9 indicates that the *IEP* stated that the Student should be allowed time to undress herself. Finding of Fact #10 indicates that the School personnel did not always allow the Student the opportunity to do such; however, this issue has been addressed in the Student's *IEP* for the 2001-02 school year. Although a violation of 511 IAC 7-27-7(a) occurred with respect to providing the accommodation of additional time for dressing, it has subsequently been resolved; and no additional corrective action is required.
- 1.c. Finding of Fact #16 indicates that the Teacher indicated on the progress reports sent to the Complainant on June 6, 2001, which goals and objectives were not implemented. A violation of 511 IAC 7-27-7(a) occurred with respect to implementing the Student's *IEP* as written.
- 1.d. Findings of Fact #11, #12, #13, and #14 indicate that the Student's re-evaluation was administered without utilizing a psychologist competent in sign language. However, Finding of Fact #12 indicates that the School has agreed to the Complainant's request for an independent evaluation at the School's expense. Although a violation of 511 IAC 7-27-7(a) occurred with respect to utilizing a psychologist fluent in sign language to provide the Student's triennial re-evaluation, as specified in the *IEP*, the violation has been corrected, and no additional corrective action is required.
- 1.e. Findings of Fact #15 and #16 indicate that the Complainant did not receive the quarterly progress notes as specified in the Student's *IEP*. A violation of 511 IAC 7-27-7(a) occurred with respect to implementing the *IEP* as written.
- 1.f. Findings of Fact #17 indicates that the Student was to participate in ISTEP+ testing with specific accommodations. However, Finding of Fact #18 indicates that the Teacher administered the third grade level test instead of the sixth grade level; thereby, making the third grade level test an alternative assessment. A violation of 511 IAC 7-27-7(a) occurred with respect to the School failing to allow the Student to take the ISTEP+ test, as stated in the *IEP*.
2. Findings of Fact #19 and #20 indicate that the Student was not allowed to participate in school-sponsored field trips to a restaurant and a local amusement park, as provided for in Article 7. A violation of 511 IAC 7-27-9(b) occurred.
3. Findings of Fact #2 and #3 indicate that the Student was to be provided an interpreter with intermediate skills and that the interpreter was to be provided in academic areas. Findings of Fact #4, #5, #6, and #7 indicate that an interpreter with such skills was always available to provide such services to the Student. No violation of 511 IAC 7-21-2 occurred with regard to providing the Student a free appropriate public education.
4. Findings of Fact #1 and #2 indicate that the HI Classroom may include students of various ages who attend the School; however, the Student's placement in the self-contained HI Classroom was documented in the *IEP*. No violation of 511 IAC 7-27-9(a)(11) occurred.

5. Findings of Fact #13 and #14 indicate that the Complainant was not provided with written notice no less than twenty instructional days prior to the projected date of the Student's re-evaluation. A violation of 511 IAC 7-25-6(i) occurred.
6. Findings of Fact #13 and #14 indicate that the Complainant was not provided with written notice within twenty instructional days of the Student's re-evaluation that the re-evaluation had been conducted. A violation of 511 IAC 7-25-6(j) occurred.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The South Bend Community School Corporation shall:

- 1.a. conduct an inservice training with all of the School's professional personnel regarding the requirement to implement student *IEPs* as they are written. A copy of the inservice training agenda and any materials presented, along with a sign-in sheet of all attendees, by name and title, shall be submitted to the Division no later than August 31, 2001.
2. conduct an inservice training with all of the School's professional personnel regarding the requirement to ensure that all students with disabilities are afforded the variety of educational programs and services that are available to students without disabilities, specifically, field trips. Further, attendees shall be informed that parents cannot be required to accompany students on field trips as a condition of participating in said trips, and that this practice shall cease immediately. A copy of the inservice training agenda and any materials presented, along with a sign-in sheet of all attendees, by name and title, shall be submitted to the Division no later than August 31, 2001.
3. conduct a inservice training with all of the School's professional personnel regarding triennial re-evaluation requirements, specifically, the requirement to notify parents prior to and after the re-evaluation has been conducted. A copy of the inservice training agenda and any materials presented, along with a sign-in sheet of all attendees, by name and title, shall be submitted to the Division no later than August 31, 2001.

DATE REPORT COMPLETED: June 25, 2001